

Date: March 14, 2002 Label No. EV074199765US

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Dawn M. Berry
Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

GHOSAL *et al.*

Application No.: 09/475,385

Filed: December 30, 1999

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Group Art Unit: 1724

Examiner: F. Lawrence Jr.

For: MODIFIED CARBON ADSORBENTS AND PROCESSES FOR ADSORPTION USING THE SAME

REQUEST TO REMOVE FINALITY OF OFFICE ACTION

Assistant Commissioner for Patents
Washington, D.C. 20231

March 14, 2002

Sir:

The Applicants formally request that the Examiner remove the finality in the Office Action dated December 14, 2001. In a telephone call with Examiner Lawrence a few weeks ago, the Examiner requested that such a request be made in writing at the time the response is filed. As was indicated to the Examiner, in the first Office Action dated May 22, 2001, the Examiner rejected several claims in view of U.S. Patent No. 5,554,739 to Belmont only under 35 U.S.C. §102(b). It is respectfully pointed out that, at that time, the Examiner could have made the same rejection under 35 U.S.C. §102(e) as well but did not. The Applicants further note that in response to the first Office Action, no amendments were made to the claims that are pending.

In the Office Action dated December 14, 2001, which the Examiner made final, the Examiner has now rejected several claims under 35 U.S.C. §102(e) under Belmont. Thus, the

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Amendment After Final
U.S. Patent Application No. 09/475,385

Examiner has changed the rejection from a § 102(b) rejection to a §102(e) rejection which was not necessitated by any amendment by the Applicants. At page 4 of the Office Action, the Examiner does admit that "the examiner erroneously cited section (b) of 35 USC 102 but intended to cite section (e)." However, the error by the Examiner has unfairly penalized the Applicants.

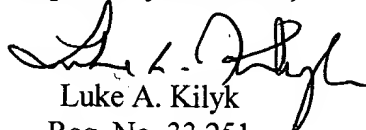
In view of this new rejection, this Office Action cannot be made final. Under MPEP §706.07(a), the second or any subsequent action on the merits shall be final, ~~except~~ where the Examiner introduces a new ground of rejection that is neither necessitated by Applicant's amendment of the claims nor based on information submitted in an Information Disclosure Statement. Clearly, the Examiner introduced a new ground of rejection that was not necessitated by Applicant's amendment. Accordingly, withdrawal of the finality of this Office Action is respectfully requested.

The Applicants reserve the right to petition the Group Director should the Examiner refuse to remove the finality of the Office Action.

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If there are any other fees due in connection with the filing of this response, please charge the fees to deposit Account No. 03-0060. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,


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